

NTSB Order No. EA-5019

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of February, 2003

Docket SE-16447

The Administrator and respondent appeal the oral initial decision of Administrative Law Judge William R. Mullins, issued on February 26, 2002.¹ By that decision, the law judge upheld the Administrator's allegation that respondent violated section 43.13(b) of the Federal Aviation Regulations (FARs), but imposed a \$1,000 civil penalty instead of the 30-day suspension of

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respondent's Airframe and Powerplant ("A&P") certificate sought by the Administrator.² We grant the Administrator's appeal and deny respondent's appeal.

Respondent is the Director of Maintenance for Professional Flight Training, a Part 141 flight school that, apparently, also operates at least some of its aircraft under a Part 135 charter certificate. On April 4, 2001, Federal Aviation Administration ("FAA") Inspector Mark Hemmerle conducted a ramp inspection on one of Professional Flight Training's aircraft, a Piper Navajo, that was about to depart on a passenger-carrying Part 135 flight. During the inspection, Inspector Hemmerle noted that the aircraft's left aileron exhibited "excessive play" and notified the pilot and, subsequently via telephone, respondent. Respondent subsequently determined that the wrong bolt was installed on both the left and right aileron attachment fittings and, after the charter flight was completed and the aircraft returned to its base, respondent replaced the bolts. Further

² FAR section 43.13, 14 C.F.R. Part 43, provides, in relevant part, as follows:

Sec. 43.13 Performance Rules (general).

* * * * *

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

investigation by Inspector Hemmerle determined that respondent had previously signed an entry in the aircraft's logbook on October 18, 2000, indicating that the control surfaces were reinstalled after the aircraft had been repainted, and that on November 14, 2000, using his Inspection Authorization ("IA") authority, respondent signed the aircraft's logbook to certify that the aircraft had undergone an annual inspection and was found to be airworthy. Exhibits ("Ex.") A-3 and A-4. Respondent admits that "an incorrect bolt [was] attached at the control rod end of the left aileron." Ex. A-2.

At the hearing, counsel for respondent did not dispute these facts, but, rather, sought to challenge the Administrator's choice of sanction.³ The Administrator introduced into evidence excerpts from FAA Order 2150.3A, Appendix 4, commonly referred to as the Sanction Guidance Table, demonstrating that the normal sanction for "failure to properly perform maintenance" is a suspension ranging between 30 and 120 days. Testimony by both Inspector Hemmerle and respondent's own witness, Gilman Page, a specialist on maintenance of Piper aircraft, demonstrated that use of the wrong bolt in attaching the aileron presented safety of flight concerns. Inspector Hemmerle testified that, after consulting FAA Order 2150.3A, he recommended an enforcement action against respondent's A&P certificate for the October 18,

³ "That's absolutely right, the wrong bolt. We're here for sanction only. We admit everything. We've never disputed that. [Respondent's] never disputed that. He's told [the FAA] that. He told them that on the day of the incident. They changed it right away." Transcript ("Tr.") at 8.

2000 use of an improper bolt in reattaching the aileron.

The law judge found that the Administrator proved, "by the evidence and by stipulation," that respondent violated FAR 43.13(b). However, after noting that the minimum sanction for such a violation is, according to the Administrator's own written and publicly-available guidance, a 30-day suspension, the law judge concluded that "this is one of those cases where it would be appropriate to assess and impose a civil penalty versus a suspension, and that is going to be my Order." Initial Decision ("I.D.") at 105.⁴

The only issue raised on appeal concerns the law judge's sanction modification.⁵ We agree with the Administrator that the

⁴ The law judge elaborated by stating:

Counsel has argued that ... the Board is obligated to give deference to the Administrator's choice of sanction, the sanction guidance table. And my concern, not in this case, but my concern down the line, and I'll share it with you, is that, as I suggested earlier, the sanction guidance table ... has not been amended and/or updated since Congress ... passed the Civil Penalty Assessment Act. And I am always hard pressed to understand why I should give an Agency deference that's not giving deference to Congressional legislation and/or Congressional mandate.

I.D. at 104-105.

⁵ Respondent's only argument on appeal is that the law judge erred in finding a violation of FAR section 43.13(b) because "the matter had already closed" as a result of the Letter of Correction. Respondent's argument has no merit, and, we note, is premised in part on an inaccurate argument that "the installation and inspection of the bolt were one and the same act ... [that] occurred simultaneously." Inspector Hemmerle testified that he also issued a letter of correction for respondent's IA because of the November 14, 2000 annual inspection. When asked why he didn't issue a letter of correction instead of pursuing the section 41.13(b) charge, Inspector Hemmerle testified that "if

law judge erred in imposing a civil penalty in lieu of the 30-day suspension of respondent's A&P certificate she ordered. Indeed, there is absolutely no legal or factual basis for the law judge's decision, contrary to the Administrator's published sanction guidance, to impose a civil penalty. The Administrator has sought the minimum sanction for this type of violation, and we discern nothing arbitrary or capricious in her choice of sanction. Deference to that choice was required. 49 U.S.C. § 44709(d)(3); Administrator v. Peacon, NTSB Order No. EA-4607 (1997).

(..continued)

there's similar violations, the guidance states that you cannot give administrative action twice for the same violation." Tr. at 38. In the absence of any argument that respondent was prejudiced in preparing his defense of the FAR section 43.13(b) charge, we view the Administrator's decision to proceed with an administrative action against respondent's IA authority for failing to discover the improper bolt during the November 18, 2000 annual inspection irrelevant to this proceeding against respondent's A&P certificate, and a matter that is committed to her discretion. Accordingly, we find no basis to disturb the law judge's finding that respondent violated FAR section 43.13(b) when the improper bolt was installed on October 18, 2000.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted;
3. The law judge's decision regarding the FAR section 43.13(b) violation is affirmed, but the civil penalty ordered by the law judge is vacated; and
4. The 30-day suspension of respondent's A&P certificate, as ordered by the Administrator, is re-instated and shall begin 30 days after the service date indicated on this opinion and order.⁶

HAMMERSCHMIDT, Acting Chairman, and GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

⁶ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).